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shipment under the supervision of the Federal or Federal-State Inspection Service. Individual consumer packages of kiwifruit placed directly on a pallet shall have all outside or exposed packages on a pallet positive lot identified with a plain mark corresponding to the lot inspection conducted by an authorized inspector or have one inspection label placed on each side of the pallet. Reusable plastic containers of kiwifruit, placed on a pallet, shall be positive lot identified in accordance with Federal or Federal-State Inspection Service procedures and shall have required information on the cards of the individual containers, as provided in this section of the regulations.

(e) As used in this section, the term *principal display panel* means that part of the package or container most likely to be displayed, presented, shown or examined under normal or customary conditions of display and purchase.

(f) Kiwifruit that has been inspected and certified, and is subsequently placed into new containers, does not have to be positive lot identified, as prescribed in paragraph (d) of this section: *Provided, That:*

(1) Such kiwifruit is of the same grade and size as originally inspected; and

(2) The handler requests a verification number from the Federal or Federal-State Inspection Service prior to shipment; plainly marks one end of each container with such number and the letter “R,” both of which shall be at least one-half inch in height; and submits a Kiwifruit Verification Form to the Federal or Federal-State Inspection Service within 3 business days of such request. The handler shall provide the following information on the Kiwifruit Verification Form.

(i) From the original inspection:

(A) The positive lot identification numbers;

(B) The identity of the handler;

(C) The inspection certificate numbers;

(D) The grade and size of the kiwifruit;

(E) The number and type of containers; and

(F) The handler’s brand; and

(ii) On the kiwifruit placed into new containers:

(A) The number and type of containers; and

(B) The applicable brand.

[58 FR 43246, Aug. 16, 1993, as amended at 61 FR 13395, Mar. 27, 1996; 64 FR 41019, July 29, 1999; 69 FR 54199, Sept. 8, 2004; 71 FR 58249, Oct. 3, 2006]

**PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON**

**Subpart—Order Regulating Handling**

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AUTHORITY: 7 U.S.C. 601–674.

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SOURCE: 22 FR 3514, May 21, 1957, unless otherwise noted. Redesignated at 26 FR 12751, Dec. 30, 1961.

### DEFINITIONS

#### § 922.1 Secretary.

*Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

#### § 922.2 Act.

*Act* means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricul-

tural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*; 68 Stat. 906, 1047).

#### § 922.3 Person.

*Person* means an individual, partnership, corporation, association, or any other business unit.

#### § 922.4 Production area.

*Production area* means the counties of Okanogan, Chelan, Kittitas, Yakima, and Klickitat in the State of Washington and all of the counties in Washington lying east thereof.

[27 FR 5188, June 2, 1962]

#### § 922.5 Apricots.

*Apricots* means all varieties of apricots, grown in the production area, classified botanically as *Prunus armeniaca*.

#### § 922.6 Varieties.

*Varieties* means and includes all classifications or subdivisions of *Prunus armeniaca*.

#### § 922.7 Fiscal period.

*Fiscal period* is synonymous with fiscal year and means the 12-month period ending on March 31 of each year or such other period that may be approved by the Secretary pursuant to recommendations by the committee.

#### § 922.8 Committee.

*Committee* means the Washington Apricot Marketing Committee established pursuant to § 922.20.

#### § 922.9 Grade.

*Grade* means any one of the officially established grades of apricots as defined and set forth in:

(a) United States Standards for Apricots (§§ 51.2925 to 51.2932 of this title) or amendments thereto, or modifications thereof, or variations based thereon;

(b) Standards for apricots issued by the State of Washington or amendments thereto, or modifications thereof, or variations based thereon.

#### § 922.10 Size.

*Size* means the greatest diameter, measured through the center of the

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apricot, at right angles to a line running from the stem to the blossom end, or such other specification as may be established by the committee with the approval of the Secretary.

## **§ 922.11 Grower.**

*Grower* is synonymous with producer and means any person who produces apricots for market and who has a proprietary interest therein: *Provided*, That a grower who is also a handler must have produced not less than 51 percent of the apricots handled by him during the previous season in order to qualify as a grower under §§ 922.20, 922.22, and 922.23.

## **§ 922.12 Handler.**

*Handler* is synonymous with shipper and means any person (except a common or contract carrier transporting apricots owned by another person) who handles apricots.

## **§ 922.13 Handle.**

*Handle* or *ship* means to sell, consign, deliver, or transport apricots within the production area or between the production area and any point outside thereof: *Provided*, That the term “handle” shall not include the transportation within the production area of apricots from the orchard where grown to a packing facility located within such area for preparation for market.

[27 FR 5188, June 2, 1962]

## **§ 922.14 District.**

*District* means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 922.31(m):

(a) *District 1* shall include all counties within the production area not included in District 2.

(b) *District 2* shall include the Counties of Yakima, Benton, and Klickitat.

[22 FR 3514, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 5188, June 2, 1962]

## **§ 922.15 Export.**

*Export* means to ship apricots beyond the continental boundaries of the United States.

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## **§ 922.16 Pack.**

*Pack* means the specific arrangement, size, weight, count, or grade of a quantity of apricots in a particular type and size of container, or any combination thereof.

## **§ 922.17 Container.**

*Container* means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of apricots.

## **ADMINISTRATIVE BODY**

## **§ 922.20 Establishment and membership.**

There is hereby established a Washington Apricot Marketing Committee consisting of twelve members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. Eight of the members and their respective alternates shall be growers or officers or employees of corporate growers. Four of the members and their respective alternates shall be handlers, or officers or employees of corporate handlers. The eight members of the committee who are growers or employees or officers of corporate growers are referred to in this part as “grower members” of the committee; and the four members of the committee who shall be handlers, or officers or employees of corporate handlers, are referred to in this part as “handler members” of the committee. Four of the grower members and their respective alternates shall be producers of apricots in District 1, and four of the grower members and their respective alternates shall be producers of apricots in District 2. Two of the handler members and their respective alternates shall be handlers of apricots in District 1, and two of the handler members with their respective alternates shall be handlers of apricots in District 2.

## **§ 922.21 Term of office.**

The term of office of each member and alternate member of the committee shall be for 2 years beginning April 1 and ending March 31: *Provided*, That the terms of office of one-half the initial members and alternates shall

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end March 31, 1958. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The terms of office of successor members and alternates shall be so determined that one-half of the total committee membership ends each March 31.

### § 922.22 Nomination.

(a) *Initial members.* Nominations for each of the eight initial grower members and four initial handler members of the committee, together with nominations for the initial alternate members for each position may be submitted to the Secretary by individual growers and handlers. Such nominations may be made by means of group meetings of the growers and handlers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified, in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided for in § 922.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than March 1 of each year, a meeting or meetings of growers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee. At each such meeting a chairman and a secretary shall be selected by the growers and handlers eligible to participate therein. The chairman shall announce at the meeting the number of votes cast for each person nominated for member or alternate member and shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of corporate growers, who are present at

such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces apricots. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If qualified, a person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of corporate handlers, who are present at such nomination meetings, may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which he handles apricots. No handler shall participate in the election of nominees in more than one district in any one fiscal year. If qualified, a person may vote either as a grower or as a handler but not as both.

### § 922.23 Selection.

From the nominations made pursuant to § 922.22, or from other qualified persons, the Secretary shall select the eight grower members of the committee, the four handler members of the committee, and an alternate for each such member.

### § 922.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 922.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 922.20.

### § 922.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

### § 922.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the

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event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 922.22 and 922.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 922.20.

### § 922.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee may designate any other alternate member from the same district and group (handler or grower) to serve in such member's place and stead.

### § 922.30 Powers.

The committee shall have the following powers:

- (a) To administer the provisions of this part in accordance with its terms;
- (b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;
- (c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and
- (d) To recommend to the Secretary amendments to this part.

### § 922.31 Duties.

The committee shall have, among others, the following duties:

- (a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;
- (b) To appoint such employees, agents, and representatives as it may

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deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to apricots;

(i) To submit to the Secretary such available information as he may request;

(j) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations;

(k) To give the Secretary the same notice of meetings of the committee as is given to its members;

(l) To investigate compliance with the provisions of this part;

(m) With the approval of the Secretary, to redefine the districts into which the production area is divided, and to reapportion the representation of any district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in apricot production within the districts and the production area.

### § 922.32 Procedure.

(a) Eight members of the committee, including alternates acting for members, shall constitute a quorum; and

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any action of the committee shall require the concurring vote of at least 7 members: *Provided*, That when two-thirds of the membership present is greater than 7, such requirement shall be two-thirds of such membership.

(b) The committee may provide for simultaneous meetings of groups of its members assembled at two or more designated places: *Provided*, That such meetings shall be subject to the establishment of communication between all such groups and the availability of loud speaker receivers for each group so that each member may participate in the discussions and other actions the same as if the committee were assembled in one place. Any such meeting shall be considered as an assembled meeting.

(c) The committee may vote by telegraph, telephone, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

### § 922.33 Expenses and compensation.

The members of the committee, and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and may also receive compensation, as determined by the committee, which shall not exceed \$10 per day or portion thereof spent in performing such duties: *Provided*, That at its discretion the committee may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses and compensation, as aforesaid.

### § 922.34 Annual report.

The committee shall, prior to the last day of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal period; (b) an appraisal of the effect of such regulatory operations upon the apricot in-

dustry; and (c) any recommendations for changes in the program.

## EXPENSES AND ASSESSMENTS

### § 922.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 922.41.

### § 922.41 Assessments.

(a) Each person who first handles apricots shall, with respect to the apricots so handled by him, pay to the committee upon demand such person's pro rata share of the expenses which the Secretary finds will be incurred by the committee during each fiscal period. Each such person's share of such expenses shall be equal to the ratio between the total quantity of apricots handled by him as the first handler thereof during the applicable fiscal period and the total quantity of apricots so handled by all persons during the same fiscal period. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all apricots handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purpose.

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### § 922.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for as follows:

(1) Except as provided in paragraph (a)(2) of this section each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal period unless such person demands repayment thereof, in which event it shall be paid to him: *Provided*, That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve. Such reserve may be established at an amount not to exceed approximately one fiscal period's operational expenses; and such reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, and to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal period when there is a crop failure, or during any period of suspension of any or all of the provisions of this part. Such reserve may also be used by the committee to finance its operations, during any fiscal period, prior to the time that assessment income is sufficient to cover such expenses; but any of the reserve funds so used shall be returned to the reserve as soon as assessment income is available for this purpose. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate; *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds, and claims vested in such member pursuant to this part.

### RESEARCH

### § 922.45 Marketing research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of apricots. The expense of such projects shall be paid from funds collected pursuant to § 922.41.

### REGULATIONS

### § 922.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to § 922.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of apricots within the production area;

(2) The expected general quality and size of apricots in the production area and in other areas;

(3) The expected demand conditions for apricots in different market outlets;

(4) The expected shipments of apricots produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

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(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of apricots; and

(8) The type of regulations expected to be recommended during the season.

(b) In the event it becomes advisable, because of changes in the supply and demand situation for apricots, to modify substantially such marketing policy, the committee shall submit to the Secretary a revised marketing policy report setting forth the information prescribed in this section. The committee shall publicly announce the contents of each marketing policy report, including each revised marketing policy report, and copies thereof shall be maintained in the office of the committee where they shall be available for examination by growers and handlers.

### § 922.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of apricots in the manner provided in § 922.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for apricots during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

### § 922.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of apricots whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular

grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of apricots grown in any district or districts of the production area;

(2) Limit the shipment of apricots by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of apricots.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to growers and handlers.

[22 FR 3514, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 5188, June 2, 1962]

### § 922.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 922.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of apricots in order to effectuate the declared policy of the act, he shall modify, suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

### § 922.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 922.41,



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922.52, 922.53, and 922.55, and the regulations issued thereunder, handle apricots (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to § 922.41, § 922.52, § 922.53, or § 922.55, the handling of apricots in such minimum quantities, or types of shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 922.45), as the committee, with approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent apricots handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle apricots pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the apricots will not be used for any purpose not authorized by this section.

## § 922.55 Inspection and certification.

Whenever the handling of any variety of apricots is regulated pursuant to § 922.52 or § 922.53, each handler who handles apricots shall, prior thereto, cause such apricots to be inspected by the Federal-State Inspection Service and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for apricots which previously have been so inspected and certified only if such apricots have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of

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the certificate of inspection issued with respect to such apricots. The committee may, with the approval of the Secretary, prescribe rules and regulations modifying the inspection requirements of this section as to time and place such inspection shall be performed whenever it is determined it would not be practical to perform the required inspection at a particular location: *Provided*, That all such shipments shall comply with all regulations in effect.

[22 FR 3514, May 21, 1957. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 27 FR 5188, June 2, 1962]

## REPORTS

## § 922.60 Reports.

(a) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part. Such reports may include, but are not necessarily limited to, the following: (1) The quantities of each variety of apricots received by a handler, (2) the quantities disposed of by him segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such apricots, and (4) the destination of each such shipment.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the apricots received, and of apricots disposed of, by such handler as may be necessary to verify reports pursuant to this section.

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### MISCELLANEOUS PROVISIONS

#### § 922.61 Compliance.

Except as provided in this part, no person shall handle apricots, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle apricots except in conformity with the provisions of this part.

#### § 922.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

#### § 922.63 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature to this part, and shall continue in force until terminated in one of the ways specified in § 922.64.

#### § 922.64 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever he finds that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production area in the production of apri-

cots for market: *Provided*, That such majority has produced for market during such period more than 50 percent of the volume of apricots produced for market in the production area; but such termination shall be effective only if announced on or before March 31 of the then current fiscal period.

(d) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

#### § 922.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant hereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the committee and upon the trustees.

#### § 922.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of

## **§ 922.67**

this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

### **§ 922.67 Duration of immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

### **§ 922.68 Agents.**

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

### **§ 922.69 Derogation.**

Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

### **§ 922.70 Personal liability.**

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other act, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

### **§ 922.71 Separability.**

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

## **7 CFR Ch. IX (1-1-08 Edition)**

### **Subpart—Container Exemption; Waivers of Inspection and Certification**

#### **§ 922.110 Container exemption.**

Whenever container limitations are effective pursuant to § 922.52, a handler may make test shipments of apricots in experimental containers, approved by the committee, subject to the following:

(a) Test shipments shall be made only in connection with a container research project, or projects, being conducted by or in cooperation with the Washington Apricot Marketing Committee.

(b) The handler shall first make application to, and receive a permit from, the Washington Apricot Marketing Committee on a form of the committee to handle each experimental container proposed to be used by the handler for test shipments. Such application shall contain the following information:

(1) Name and address of the applicant and date of application;

(2) Description of the container, including size, weight, inside dimensions, and type of pack;

(3) Quantity of such containers proposed to be shipped.

(c) Approval of the application shall be evidenced by the issuance to the applicant by the committee of a permit which shall authorize the handling of apricots in such quantity of experimental containers as the committee may approve.

(d) With respect to each test shipment of apricots handled in experimental containers, the handler shall, prior to such handling, advise the committee as to (1) the number and type of the container or containers in the test shipment, (2) identification of the carrier, (3) name and address of the receiver, and (4) expected time of arrival at destination.

(e) Terms used in this section shall have the same meaning as when used in said marketing agreement and order (§§ 922.1 to 922.71).

[23 FR 4781, June 28, 1958. Redesignated at 26 FR 12751, Dec. 30, 1961]

## Agricultural Marketing Service, USDA

## § 922.235

### § 922.111 Waiver of inspection and certification.

(a) *Application.* Any handler (including a grower-handler packing and handling apricots of his own production), whose packing facilities are located in an area where a Washington State Horticultural Division Inspection Office or Federal-State Inspector is not readily available to perform the required inspection may, prior to shipment, apply to the Committee for a permit authorizing a waiver of inspection. Applications shall be made on forms furnished by the Committee and shall contain such information as the Committee may require including: Name and address of applicant, location of packing facility, distance of packing facility from the nearest inspection office, period (by approximate beginning and ending dates) during which applicant expects to ship apricots, estimated quantity of apricots applicant expects to ship to fresh market during such period, manner in which the majority of applicant's fruit will be marketed (i.e., transported by applicant to market, sold at orchard to truckers, etc.), areas or markets to which applicant expects to ship the majority of his apricots. The application shall also contain an agreement by applicant (1) not to ship or handle any apricots unless such apricots meet the grade, size, maturity, container, and all other requirements of the amended marketing agreement and order in effect at time of handling, (2) to report periodically to the Committee on reporting forms furnished by the Committee the following information on each shipment: quantity, variety, grade, minimum size, container, date of shipment, destination, name and address of buyer or receiver, and such other information as the Committee may specify, (3) to pay applicable assessments on each shipment, (4) to have or cause to have each shipment of apricots inspected when such shipment is transported to a market or through a location en route to market where an inspector is available, and (5) to comply with such other safeguards as the Committee may prescribe.

(b) *Issuance of permit.* Whenever the Committee finds and determines from the information contained in the appli-

cation or from other proof satisfactory to the Committee that the applicant is entitled to a waiver from the inspection requirements of the amended marketing agreement and order at time of shipment, the Committee shall issue a permit authorizing the applicant to ship apricots in accordance with these administrative regulations and the terms and conditions of such permit.

[29 FR 9526, July 14, 1964]

### § 922.142 Reserve fund.

(a) The establishment of a reserve fund of an amount not greater than approximately one fiscal year's operational expenses is appropriate and necessary to the maintenance and functioning of the Washington Apricot Marketing Committee. The committee is hereby authorized to carry forward in the aforesaid reserve \$5,765.09 which are excess assessment funds from the fiscal period ended March 31, 1960, and \$787.61 which are excess assessment funds from the fiscal period ended March 31, 1961. Such reserve shall be used in accordance with the provisions of § 922.42 of the said marketing agreement and order (§§ 922.1 to 922.71).

(b) Terms used in this section shall have the same meaning as given to the respective term in said marketing agreement and order.

[26 FR 8664, Sept. 16, 1961. Redesignated at 26 FR 12751, Dec. 30, 1961 and 44 FR 73010, Dec. 17, 1979]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .322 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

## Subpart—Assessment Rate

### § 922.235 Assessment rate.

On or after April 1, 2007, an assessment rate of \$1.50 per ton is established for the Washington Apricot Marketing Committee.

[72 FR 49136, Aug. 28, 2007]

**Subpart—Container Regulations****§ 922.306 Apricot Regulation 6.**

(a) No handler shall handle any apricots unless such apricots are:

(1) In open containers or telescope fiberboard cartons and the net weight of the apricots is not less than 28 pounds; or

(2) In closed containers containing not less than 14 pounds, net weight, of apricots: *Provided*, That when the apricots are packed in such containers they are row-faced or tray-packed; or

(3) In closed containers that are marked “12 pounds net weight” and contain not less than 12 pounds, net weight, of apricots which are of random size and are not row-faced; or

(4) In closed containers containing not less than 24 pounds, net weight, of apricots when packed loose in such containers; or

(5) If exported to Canada, in any of the containers specified in this paragraph (a) or in containers having inside dimensions of 16½×11½ inches with 4¾-inch end pieces and 3¾-inch side pieces.

(b) Notwithstanding any other provisions of this section, any individual shipment of apricots which, in the aggregate, does not exceed 500 pounds, net weight, may be handled without regard to the requirements specified in this section or in §§ 922.41 or 922.55.

(c) All apricots handled are also subject to all applicable grade, size, quality, maturity and pack regulations which are in effect pursuant to this part.

(d) The terms *handler*, *handle* and *apricots* shall have the same meaning as when used in the amended marketing agreement and order.

[59 FR 30673, June 15, 1994, as amended at 63 FR 32718, June 16, 1998]

EFFECTIVE DATE NOTE: At 72 FR 16265, Apr. 4, 2007, § 922.306 was suspended indefinitely, effective Apr. 1, 2007.

**Subpart—Grade and Size Regulation****§ 922.321 Apricot Regulation 21.**

(a) On and after August 1, 1981, no handler shall handle any container of apricots unless such apricots meet the following applicable requirements, or

are handled in accordance with paragraph (a)(3) of this section:

(1) [Reserved]

(2) *Minimum size requirements.* Such apricots measure not less than 1½ inches in diameter except that apricots of the Blenheim, Blenril, and Tilton varieties may measure not less than 1¼ inches: *Provided*, That not more than 10 percent, by count, of such apricots may fail to meet the applicable minimum diameter requirements.

(3) Notwithstanding any other provision of this section, any individual shipment of apricots which meets each of the following requirements may be handled without regard to the provisions of this paragraph, of § 922.41 (Assessments), and of § 922.55 (Inspection and Certification):

(i) The shipment consists of apricots sold for home use and not for resale;

(ii) The shipment does not, in the aggregate, exceed 500 pounds, net weight, of apricots; and

(iii) Each container is stamped or marked with the words “not for resale” in letters at least one-half inch in height.

(b) The terms *diameter* and *Washington No. 1* shall have the same meaning as when used in the State of Washington Department of Agriculture Standards for Apricots, effective May 31, 1966; *reasonably uniform in color* means that the apricots in the individual container do not show sufficient variation in color to materially affect the general appearance of the apricots; and *generally well matured* means that with respect to not less than 90 percent, by count, of the apricots in any lot of containers, and not less than 85 percent, by count, of such apricots in any container in such lot, at least 40 percent of the surface area of the fruit is at least as yellow as Shade 3 on U.S. Department of Agriculture Standard Ground Color Chart of Apples and Pears in Western States.

[46 FR 38668, July 29, 1981, as amended at 54 FR 26186, June 22, 1989 and 54 FR 37294, Sept. 8, 1989; 60 FR 32430, June 22, 1995; 61 FR 30497, June 17, 1996]